on defendants part is shown by direct evidence, and it is apparent that other causes may have led to the accident. Laughlin, J., *dissenting.*

The weight of authority holds that the origin of the accident being fixed upon the defendant, negligence is presumed in the absence of explanation. *Shearman & R. on Negligence,* Sect. 60; *Spaulding v. C. & N. W. R. Co.,* 30 Wis. 110. In the following cases negligence was presumed: explosion of a steamboat boiler; *Posey v. Scoville,* 10 Fed. Rep. 140; running down cattle on the railroad track; *Louisville R. Co. v. Conrey,* 63 Miss. 562; and where a bolt fell from an elevated railway into the street; *Volkmar v. Manhattan Co.,* 134 N. Y. 418. But some courts hold that negligence is not presumed in the absence of explanation. *Huff v. Austin,* 46 Ohio St. 386; *Consulich v. Standard Oil Co.,* 12 N. Y., 118; except where the relation of carrier and passenger exists; *Curtis v. Rochester, etc., Ry. Co.,* 18 N. Y. 534; and where the condition or event permits no inference save negligence on the part of the defendant. *Mullen v. St. John,* 57 N. Y. 567.

RAILROADS—CROSSING ACCIDENTS—CONTRIBUTORY NEGLIGENCE—SCHAUB V. KANSAS CITY SOUTHERN, 113 S. W. 1163 (MO. APP.).—*Held,* that it is the duty of one on approaching a railroad crossing, on a public street, to look and listen and use reasonable care to discover appraching trains.

The absence of a watchman, usually stationed at a crossing, the fact that the gates are open, or the silence of an alarm bell known to ring on the approach of a train, do not free one from the duty to stop, look and listen before entering the danger zone. *St. Louis I. M. & S. Ry. Co. v. Amos,* 54 Ark. 159; *Romeo v. Boston & M. R. R.,* 87 Me. 540; *Tobias v. Mich. Cent. R. Co.,* 110 Mich. 440; *Greenwood v. Philadelphia W. & B. R. Co.,* 124 Pa. 572. However, he has a right to take any of these facts into consideration in determining to what extent he will look. *Merrigan v. Boston & A. R. Co.,* 154 Mass. 189. Contrary to this view, many jurisdictions have held the lack of the prescribed signs of warning an assurance of a safe crossing; and that, one injured while crossing without farther investigation regarding movements of trains is free from contributory negligence. *Chicago, R. I. & P. Ry. Co. v. Clough,* 134 Ill. 586; *Kane v. New York, N. H. & H. R. Co.,* 56 Hun. 648; *Berry v. Pennsylvania R. Co.,* 48 N. J. Law (19 Vroom) 141; *Cleveland, C., C. & I. Ry. Co. v. Schneider,* 45 Ohio St. 678. When one waits to allow a train to pass, and only proceeds after the customary signal showing the way to be clear, he need not stop to assure himself of the conditions. *Conaty v. New York, N. H. & H. R. Co.,* 164 Mass. 572; *Oldenburgh v. York Cent. H. R. Co.,* 124 N. Y. 414.

RAILROADS—CONTRIBUTORY NEGLIGENCE—LAST CLEAR CHANCE.—WILKINSON V. OREGON SHORT LINE R. R. CO., 99 PAC. 466 (UTAH).—Where the plaintiff was driving along the side of a railroad track in a place of safety, and, without looking, attempted to cross the track, and was struck by an engine and injured, *held,* that he was not entitled to recover on the ground that by the exercise of ordinary care defendant's servant

could have seen him going into a dangerous place and prevented the accident. Straup, C. J., *dissenting*.

The general rule is that if the injured person's own negligence contributed to his injury, he cannot recover. *Moulton v. Ry. Co.*, 99 Me. 508; *Jones v. R. R. Co.*, 107 Ala. 400; *Trust Co. v. Fashion Co.*, 106 Ill. App. 135. But the courts differ as to the degree of negligence necessary to bar a recovery. Some courts hold slight negligence on the plaintiff's part sufficient to bar his recovery. *Lindberg v. Ry. Co.*, 83 Ill. App. 433; *Ry. Co. v. Bynum*, 139 Ala. 389. Other courts hold that the plaintiff may recover in spite of slight negligence on his part, when the defendant was grossly negligent. *R. R. Co. v. McElmurry*, 24 Ga. 75. Many courts, by basing their decisions on the doctrine of last clear chance, allow the plaintiff to recover, even where his negligence contributed to the injury, if the defendant, by use of ordinary care, could have prevented the injury. *McLamb v. Ry. Co.*, 122 N. C. 862; *Kolb v. Transit Co.*, 76 S. W. 1050 (Mo.); *Atwood v. Ry. Co.*, 91 Me. 399. The Indiana courts adopt the strict rule that if the plaintiff was guilty of contributory negligence he cannot recover unless the defendant was wantonly and willfully negligent. *Ry. Co. v. Ceder*, 110 Ind. 376; *De Lou v. Ry. Co.*, 22 Ind. App. 377. The principle on which the doctrine allows the plaintiff to recover is that his own negligence was the remote cause of the injury. *Troy v. R. R. Co.*, 99 N. C. 298; *Tanner v. Ry. Co.*, 60 Ala. 621. And when the negligence of the plaintiff and the defendant is concurrent, the plaintiff cannot recover. *Butler v. Ry. Co.*, 99 Me. 149; *Power v. Gordon*, 102 Va. 498.

SALES — WARRANTY — STATEMENTS CONSTITUTING. — WOOLDRIDGE V. BROWN, 62 S. E. 1076 (N. C.).—The buyer of coal told the salesman that he was buying it to burn brick, and the salesman told him that it would burn brick, and was used for that purpose. *Held*, that the salesman's statement does not show a warranty of quality, or that the grade ordered would burn brick.

No particular form of words is necessary to constitute a warranty. *Hawkins v. Pemberton*, 51 N. Y. 198; and a representation by the seller as to the quality of the article sold is a warranty if so intended by the parties. *Murray v. Smith*, 4 Daly 277; *Weimer v. Clement*, 37 Pa. St. 147. However, a mere statement by the seller of his own belief, upon a matter concerning which the purchaser is to exercise his own judgment, does not constitute a warranty. *Coates v. Harvey*, 10 N. Y. St.. 276. But if the buyer relies upon the representation of the seller in making a purchase, he affirmation will be given the effect of a warranty. *Evans v. Schriver Laundry Co.*, 57 Ill. App. 150. A warranty of fitness of an article for a specific purpose cannot be implied from a knowledge on the part of the seller that the article was intended for such purpose. *Bartlett v. Hoppock*, 34 N. Y. 118; *Rose v. Meeks*, 91 Ia. 715.